

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN MAUZY PITTMAN, CHIEF JUDGE

CACR.05-724

April 26, 2006

APPEAL FROM THE POPE COUNTY
CIRCUIT COURT
[NO. CR-2001-4]

JESSICA POWELL

APPELLANT

HON. JOHN S. PATTERSON,
JUDGE

V.

AFFIRMED

STATE OF ARKANSAS

APPELLEE

Appellant was placed on probation after pleading guilty to a charge of hindering apprehension or prosecution. Within the probationary period, the State filed a petition to revoke. The State asserted in its petition to revoke that appellant's probation was conditioned on her living a law-abiding life; reporting to her probation officer; paying probation fees, costs, and fines; performing 168 hours of community service work; submitting to random drug screening; obtaining a GED; and paying restitution. The petition to revoke was premised on allegations that appellant failed to comply with these conditions by failing to report to the probation officer, being delinquent on probation fees and court payments, and by using controlled substances. After a hearing, the trial court found that she violated the conditions of her probation, revoked her probation, and sentenced her to imprisonment. On appeal, appellant argues that the trial court erred in revoking her probation in the absence of any evidence that she knew the conditions of her probation. We do not address this argument because it is raised for the first time on appeal. In a virtually identical case, we held that:

DIVISION II

The reason for the statutory requirement in Ark. Code Ann. § 5-4-303 (Repl. 1997) that probationary conditions be given to probationers in writing is to avoid misunderstanding by the probationer. *Brewer v. State*, 274 Ark. 38, 621 S.W.2d 698 (1981). This requirement comports with due process; otherwise, the trial courts have no power to imply and then later revoke on conditions that were not expressly communicated in writing to the defendant. *Neely v. State*, 7 Ark. App. 238, 647 S.W.2d 473 (1983). This is not an issue of jurisdiction that can be raised at any time; it is instead a procedural issue that is waived by appellant's failure to raise it to the trial court. See *Banning v. State*, 22 Ark. App. 144, 737 S.W.2d 167 (1987); *Cavin v. State*, 11 Ark. App. 294, 669 S.W.2d 508 (1984); *Hawkins v. State*, 270 Ark. 1016, 607 S.W.2d 400 (Ark.App. 1980). In *Cavin v. State*, *supra*, Cavin challenged the revocation of his probation on appeal arguing (1) that there was insufficient evidence to revoke, and (2) that he was never given a written statement of conditions in compliance with the statutory mandate to do so. Our court rejected both contentions on appeal, the second because it was a procedural matter that appellant failed to object to at the proper time, waiving the issue for consideration on appeal. Failure to object at the proper time waives rights otherwise afforded to a criminal defendant. *Banning v. State*, *supra*; *Cavin v. State*, *supra*; *Hawkins v. State*, *supra*. Appellant has failed to provide any convincing argument or authority to support his contention that this procedural matter is equivalent to a challenge to the sufficiency of the evidence to support finding a violation of one of those written conditions, and we therefore affirm the revocation.

Nelson v. State, 84 Ark. App. 373, 380, 141 S.W.3d 900, 904-05 (2004).

Although it is true that no written statement of the conditions of appellant's probation was admitted at trial, appellant had been served with a list of conditions in the petition to revoke, was present at the hearing, and testified at some length. In so doing she displayed familiarity with her obligations to report to her probation officer, make required payments, and undergo drug testing, and she admitted that she had failed a drug test because she smoked marijuana, missed appointments with her probation officer without notice or

explanation, and that she had the ability to pay more regularly on her court-ordered financial obligations than she had done in the past. In the absence of any objection at trial concerning the notice issue that is now argued on appeal, we hold that the argument is waived. *Id.*

Affirmed.

GRIFFEN and ROAF, JJ., agree.